

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BENJAMIN VANFOSSAN,

Plaintiff,

v.

JOHN AMAYA, et al.,

Defendants.

Case No. 1:20-cv-00173-ADA-EPG (PC)

ORDER REQUIRING PLAINTIFF TO FILE
OPPOSITION OR STATEMENT OF NON-
OPPOSITION TO DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT

Benjamin VanFossan ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action filed pursuant to 42 U.S.C. § 1983.

On February 27, 2023, Defendants filed a motion for summary judgment. (ECF No. 75). Plaintiff had thirty days to file his response (ECF No. 41, p. 6), but did not do so.

While a motion for summary judgment cannot be granted by default, Heinemann v. Satterberg, 731 F.3d 914, 916 (9th Cir. 2013), the Court does have other options when a party fails to respond. For example, if Plaintiff fails to respond, the Court may treat the facts asserted by Defendants as "undisputed for purposes of the motion." Fed. R. Civ. P. 56(e)(2).

Alternatively, if Plaintiff fails to oppose the motion or file a statement of non-opposition, the Court may recommend that this case be dismissed for failure to prosecute and failure to comply with a court order.

However, the Court will not impose any sanctions or treat the facts asserted by Defendants as undisputed at this time. Instead, the Court will give Plaintiff one more opportunity to file a

response.

Accordingly, based on the foregoing, IT IS HEREBY ORDERED that:

1. Within thirty days from the date of service of this order, Plaintiff shall file an opposition or a statement of non-opposition to Defendants' motion for summary judgment.
2. If Plaintiff fails to comply with this order, in ruling on Defendants' motion for summary judgment the Court may treat the facts asserted by Defendants in their motion for summary judgment as undisputed. Alternatively, the Court may recommend that this case be dismissed for failure to prosecute and failure to comply with a court order.

IT IS SO ORDERED.

Dated: April 24, 2023

/s/ Eric P. Gray
UNITED STATES MAGISTRATE JUDGE